

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

ALTERRA AMERICA INSURANCE CO.,

Plaintiff,

v.

NATIONAL FOOTBALL LEAGUE, et al.,

Defendants.

Index No. 652813/2012 E

Hon. Andrea Masley

**[PROPOSED]
ORDER APPOINTING REFEREE
TO SUPERVISE DISCLOSURE
PURSUANT TO CPLR 3104**

DISCOVER PROPERTY & CASUALTY
COMPANY, et al.,

Plaintiffs,

v.

NATIONAL FOOTBALL LEAGUE, et al.,

Defendants.

Index No. 652933/2012 E

Hon. Andrea Masley

WHEREAS, the parties in these actions served requests for disclosure, including demands for discovery and inspection as well as interrogatories, and corresponding responses to these requests, all pursuant to CPLR Article 31; and

WHEREAS, after service of the requests for disclosure and the responses thereto, certain disputes arose concerning the parties' disclosure obligations; and

WHEREAS, by joint letter dated February 2, 2018, the parties informed the Court of certain of these disclosure disputes and that, although they had met and conferred in good faith on their disputes, it appeared that the parties had reached an impasse on some issues; and

WHEREAS, at a February 6, 2018 conference, the Court presented the parties with several disclosure dispute resolution options, including the retention of a private special referee to assist in resolving the parties' current disclosure disputes, as well as any other disclosure disputes that may arise in the future; and

WHEREAS, the parties discussed the disclosure dispute resolution options presented at the February 6, 2018 conference and, by joint letter dated February 22, 2018, informed the Court of their agreement that the preferred course is the appointment of a private special referee to assist in resolving the parties' disclosure disputes; and

WHEREAS, pursuant to CPLR 3104(b), the Court may permit all of the parties in an action to stipulate that a named attorney may act as referee to supervise all disclosure; and

WHEREAS, the parties have discussed and agree that Hon. Michael H. Dolinger (Ret.) of JAMS should be appointed, pursuant to CPLR 3104, as the referee to supervise all disclosure in these actions, including but not limited to the disclosure disputes outlined in the parties' joint letter dated February 2, 2018; and

WHEREAS, the parties further agree that any application for review of an order of the referee made under CPLR 3104 shall be made pursuant to CPLR 3104(d); provided, however, that an application for review shall be deemed timely for all purposes under CPLR 3104(d) if the motion is made within fourteen (14) days after the order to be reviewed is made in writing and issued via e-mail to all parties by the Special Referee; and

WHEREAS, the parties further agree generally to split the fees and costs of the referee for his services in these actions equally between the National Football League and

NFL Properties LLC (the “NFL Policyholders”), on the one hand, and the remaining parties (“Insurer Parties”), on the other hand, as more particularly described below; and

NOW THEREFORE, upon good cause having been shown, it is hereby:

ORDERED that, pursuant to CPLR 3104, Hon. Michael H. Dolinger (Ret.) of JAMS is appointed as a referee pursuant to CPLR 3104 to supervise all disclosure in these actions, including but not limited to the disclosure disputes outlined in the parties’ joint letter dated February 2, 2018, with all of the powers of the Court specified under CPLR 3104(c) available to him.

ORDERED that any application for review of an order of the referee made under CPLR 3104 shall be made pursuant to CPLR 3104(d); provided, however, that an application for review shall be deemed timely for all purposes under CPLR 3104(d) if the motion is made within fourteen (14) days after the order to be reviewed is made in writing and issued via e-mail to all parties by the Special Referee.

ORDERED that the referee’s fees and costs for his service in these actions will be paid by the parties, with such fees and costs split equally between the NFL Policyholders, on the one hand, and the Insurer Parties, on the other hand. The Insurer Parties’ share will be allocated on a per capita basis among 11 law firms representing the insurer groups in this action (as reflected in Exhibit A), except to the extent a particular dispute is brought by or against fewer than all insurer groups, in which event it will be allocated on a per capita basis among the involved insurer groups. Notwithstanding anything to the contrary above, the NFL Policyholders shall have no responsibility for the referee’s fees and costs for his service in connection with any dispute not involving the NFL Policyholders.

ORDERED that within 30 days entry of this Order, Special Referee Dolinger shall conduct a conference with the parties to discuss the status of discovery and the procedures to be implemented for resolution of discovery disputes.

ORDERED that Special Referee Dolinger shall be provided a copy of the Stipulation and Order for the Production and Exchange of Confidential Information entered by this Court on May 22, 2013 and shall be deemed a permissible recipient of Confidential Information and Attorneys' Eyes Only Information pursuant to Paragraphs 6 and 7 thereunder.

Dated: _____, ___, 2018

ENTER:

Hon. Andrea Masley, J.S.C.

EXHIBIT A

- 1) Windels, Marx, Lane & Mittendorf, LLP: Allstate Insurance Company, solely as successor in interest to Northbrook Excess and Surplus Insurance Company, formerly Northbrook Insurance Company
- 2) Coughlin Duffy LLP: American Guarantee and Liability Insurance Company & Arrowood Indemnity Company
- 3) Hardin, Kundla, McKeon & Poletto, P.A.: Bedivere Insurance Company
- 4) Clyde & Co US LLP: Chubb Insurers (ACE American Insurance Company, Century Indemnity Company, Illinois Union Insurance Company, Westchester Fire Insurance Company, Federal Insurance Company, Pacific Indemnity Company, Great Northern Insurance Company, Vigilant Insurance Company)
- 5) CNA Coverage Litigation Group: Continental Insurance Company & Continental Casualty Company
- 6) Steptoe & Johnson, LLP: Hartford Accident & Indemnity Company & New England Reinsurance Corporation
- 7) Dilworth Paxson LLP: Munich Reinsurance America, Inc.
- 8) Kennedys CMK LLP: TIG Insurers (TIG Insurance Company, The North River Insurance Company, United States Fire Insurance Company)
- 9) Hermes, Netburn, O'Connor & Spearing, P.C.: Travelers Insurers (Discover Property & Casualty Insurance Company, St. Paul Protective Insurance Company, Travelers Casualty & Surety Company, Travelers Indemnity Company, Travelers Property Casualty Company of America)
- 10) Bates Carey LLP: Westport Insurance Corporation
- 11) Troutman Sanders: XL Insurance America Inc. and XL Select Insurance Company